

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**GERALD R. ST. VINCENT,**

**Plaintiff,**

**v.**

**Civil Action No. 5:09cv105  
(Judge Stamp)**

**JOEL ZIEGLER, et al.,**

**Defendants.**

**MEMORANDUM OPINION AND ORDER OF DISMISSAL**

On this day, the above-styled matter came before the Court for consideration of the Civil Rights complaint of the plaintiff, Gerald R. St. Vincent. A review of the file shows that plaintiff initiated this case on September 21, 2009. With his complaint, the plaintiff also filed a Motion for Leave to Proceed *in forma pauperis* and a Prisoner Trust Account with ledger sheets. However, the plaintiff did not file a Consent to Collection of Fees from Trust Account. Accordingly, the plaintiff was sent a deficiency notice with the form enclosed. The deficiency notice advised the plaintiff that failure to file the form within twenty (20) days would result in dismissal of the case. The deficiency notice was sent to the plaintiff by certified mail, return receipt requested. Service was accepted at FCI Morgantown on September 22, 2009.

On October 26, 2009, Magistrate Judge Seibert conducted a review of the file and determined that the plaintiff had failed to file the required form. Therefore, Magistrate Judge Seibert directed the plaintiff to show cause within ten (10) days, why the complaint should not be dismissed for the failure to prosecute. Magistrate Judge Seibert advised the plaintiff that the failure to show cause would result in dismissal of his case. Again, the order was sent by certified mail, and service was accepted at FCI Morgantown on October 27, 2009.

Upon review of the file on this date, the Court finds that the plaintiff has not complied with the Court's order of October 26, 2009, has not requested an extension of time to do so, or otherwise explained his reasons for noncompliance. Accordingly, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, it is ORDERED that the plaintiff's complaint [Dckt. 1] is hereby DISMISSED WITHOUT PREJUDICE for the failure to prosecute, and the plaintiff Motion for Leave to Proceed *in forma pauperis* [Dckt. 2] is DENIED AS MOOT. It is further ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

Should the plaintiff choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit, he is ADVISED that he must file a notice of appeal with the Clerk of this Court within 30 days after the date of the entry of the judgment order. Upon reviewing the notice of appeal, this Court will either issue a certificate of appealability or state why a certificate should not issue in accordance with Federal Rule of Appellate Procedure 22(b)(1). If this court should deny a certification, the plaintiff may request or circuit judge of the United States Court of Appeals for the Fourth Circuit to issue the certificate.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the plaintiff and any counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is directed to enter judgment on this matter.

DATED: December 1, 2009

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE